

### **REMARKS/ARGUMENTS**

The non-final Office Action of December 15, 2005, has been carefully reviewed and these remarks are responsive thereto. The Applicants' undersigned representative is new counsel of record pursuant to the new Power of Attorney filed February 17, 2006. Claims 1-11, 13-18, 21-23 and 27-38 have been amended. No new matter has been added. Claims 1-41 remain pending upon entry of this amendment. Reconsideration and allowance of the instant application are respectfully requested.

#### ***Claim Rejections Under 35 U.S.C. §103(a)***

Claims 1-41 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kostreski *et al.* (U.S. Patent No. 5,651,010, hereinafter "Kostreski") in view of Bodin *et al.* (U.S. Patent No. 5,241,685, hereinafter "Bodin"). This rejection is respectfully traversed for the following reasons.

Amended independent claims 1, 9 and 14-17 relate to, *inter alia*, determining a distribution of terminals requesting common content and modifying a network topology by varying the operational characteristics of transmitters in the network based on the determined distribution. Nowhere do either Kostreski or Bodin, either separately or in combination, teach or suggest such a feature. The Office Action concedes, at p. 4, that Kostreski differs in that it does not teach or suggest that the network defines the topology of region by varying the transmission characteristics. Instead, the Office Action relies on Bodin to allegedly cure this deficiency. In particular, the Office Action asserts that Bodin teaches defining the topology of a region by varying the transmission characteristics by disclosing, at col. 5, lines 41-46, reducing the size of a cell by dynamically varying the entering threshold of cells. Even so, Bodin fails to teach or suggest determining a *distribution of terminals requesting common content*, much less varying the operational characteristics of transmitters in the network *based on such a distribution*. Bodin's method and system are limited to load balancing between various network cells by adjusting the signal strength thresholds between two cells. Col. 2, ll. 35-50. In other words, the signal strength thresholds, and thus the cell sizes, are varied based on cell load. For example, Bodin's FIG. 4 illustrates that it's method of modifying cell sizes is dependent upon whether a

current occupancy of a cell exceeds a critical value X. In contrast, claims 1, 9 and 14-17 recite varying operational characteristics of a transmitter based on a *determined distribution of terminals requesting common content*, not a critical load value. A critical load value does not equate to a determined distribution of terminals requesting common content. Further, Kostreski also lacks any teaching or suggestion of determining a distribution of terminals requesting common content and using the determined distribution as a basis for varying operational characteristics of transmitters. At most, Kostreski discloses a broadcast system that multiplexes several compressed programs into a single data stream to enhance reception. Col. 5, ll. 16-33. Kostreski's disclosure of such a method and system is entirely void of any reference to common content requests, much less a distribution of terminal requesting common content. Claims 1, 9 and 14-17 are thus allowable for at least this reason.

Additionally, claims 1, 9 and 14-17 further relate to terminals requesting content through a return channel provided by a communications interface of a broadcast network. Neither Kostreski nor Bodin, either separately or in combination, teaches or suggests a return channel provided by a communications interface, much less terminals requesting content through such a channel. For example, Kostreski discloses a digital transport stream carrying a number of programs in compressed digital form. Col. 7, ll. 46-56. However, nowhere does Kostreski teach or suggest that the digital transport stream provides a *return channel* through which terminals may request content. Bodin, on the other hand, discloses a plurality of radio channels for communication, some of which are used for control channels. Col. 3, line. 60 – Col. 4, line 5. Even so, Bodin lacks any teaching or suggestion of a radio channel providing a *return channel* through which terminals may request content. In fact, Bodin fails to even teach or suggest terminals requesting content. As such, claims 1, 9 and 14-17 are allowable for this additional reason.

Claims 2-8, 10-13 and 18-41 are dependent on their respective base independent claims and are thus allowable for at least the same reasons as their base claims and further in view of the novel and non-obvious features recited therein. For example, claims 3, 10 and 21 relate to, *inter alia*, reducing the cellular density of an area where identical content is being delivered to a plurality of terminals in the area. Not only do both Kostreski and Bodin fail to teach or suggest

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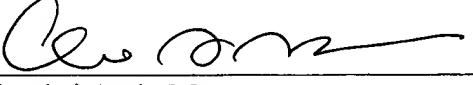
such a feature. As discussed, Kostreski lacks any teaching or suggestion of common content requests and determining a distribution of terminals requesting common content. Additionally, while Bodin discloses reducing cell size and density (i.e., number of terminals) upon determining that a current cell load has exceeded the critical load value, Bodin does not teach or suggest reducing cellular density in an area where *common content is being delivered to a plurality of terminals in that area*. In fact, like Kostreski, Bodin also does not teach or suggest the determination or use of content or programming commonality as a basis for modifying network topology. Claims 3, 10 and 21 are thus allowable for this additional reason.

### CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner find that a telephonic or personal interview would expedite passage to issue of the present application, the Examiner is encouraged to contact the undersigned attorney at the telephone number indicated below. If any additional required fees are or if an overpayment has been made the Commissioner is authorized to charge or credit Deposit Account No. 19-0733. Applicants look forward to passage to issue of the present application at the earliest convenience of the Office.

Respectfully submitted,  
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